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CONTEMPORARY FORMS OF SLAVERY

Report of the Secretary-General on the implementation of the Programme of Action for the Elimination of the Exploitation of Child Labour, submitted pursuant to Sub-Commission resolution 1995/16

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Introduction

1. The Commission on Human Rights adopted the Programme of Action for the Elimination of the Exploitation of Child Labour in its resolution 1993/79 of 10 March 1993 and recommended that all States should adopt, as a matter of priority, the necessary legislative and administrative measures to implement the Programme of Action at the national and international levels, and requested the Sub-Commission to submit to it every two years a progress report on the implementation of the Programme of Action by all States. The text of the Programme of Action is to be found in the annex to Commission resolution 1993/79.

2. In its resolution 1995/16, the Sub-Commission requested the Secretary-General to invite States to inform the Working Group of measures adopted to implement the Programme of Action and to submit a report thereon to the Sub-Commission at its forty-eighth session and to the Commission at its fifty-third session.

3. In order that the Working Group might examine this matter at its twenty-first session, the Secretary-General, on 28 February 1996, sent notes verbales to Governments requesting the desired information. As of 3 June 1996, replies had been received from Angola, Bangladesh and the Philippines.

REPLIES RECEIVED FROM GOVERNMENTS

Angola

[Original: French]
[20 May 1996]

4. The exploitation of child labour is prohibited in Angola. Nobody may employ anyone who has not reached the age of 16.

Bangladesh

[Original : English]
[5 July 1995]

5. The Government of Bangladesh has drawn the attention of the High Commissioner for Human Rights to a memorandum of understanding (MOU) on the elimination of child labour from the garment industry in Bangladesh which was signed on 4 July 1995 by the Bangladesh Garment Manufacturers and Exporters Association (BGMEA), UNICEF and ILO.

6. In this connection, attention was also drawn to the following:

(a) Bangladesh is among the least developed countries and is striving hard for accelerated economic development through the expansion of its exports. Ready-made garments have, in recent years, emerged as the largest export item and constitute one of the mainstays for Bangladesh's economic take-off. The level of child labour is low in general in Bangladesh, and in the garments sector it constitutes a very small percentage (4-5 per cent) of

total employment. It is also generally recognized that working conditions in the garments industry are significantly better than in any other industry. Moreover, unlike some other countries, Bangladesh does not have any bonded labour or forced labour.

(b) Bangladesh labour laws do not allow the use of child labour and prohibits the employment of anyone who has not attained the age of 14. By and large, Bangladesh also adheres to the principles and spirit of the relevant ILO conventions. But the existence of child labour is a complex socio-economic problem which cannot be eliminated overnight and has to be handled with care and tackled gradually.

(c) The MOU lays the groundwork for eliminating child labour from the garments industry in Bangladesh in a human and socially responsible manner. It is meant to ensure that the industry's health and international competitiveness remain robust, that Bangladesh national laws are observed, and that existing under-aged workers are given an education and assured the preservation of a significant part of their income. It is also reflective of a recognition by the business community that the education of the child is a part of their responsibility and that it helps to promote skill development which, in turn, is beneficial to industrial development.

(d) According to the terms of the MOU, all workers under the age of 14 (identified by an appropriate survey) will be withdrawn from garments factories and enrolled in schools. The MOU does not envisage termination of the employment of any worker otherwise entitled to work under the existing laws of the land. Children will not have their employment terminated until educational programmes - supported by all the signatories and established in consultation with the Government of Bangladesh - are in place for them; 31 October 1995 has been set as the target date for child-free factories, provided the schools are ready.

(e) In order to mitigate the income loss of the child workers when their employment is terminated, the MOU provides that they will receive a monthly stipend while attending school. In addition, they may benefit from after-school income generation programmes. The BGMEA will undertake to offer employment to a qualified family member of each retrenched child, when possible. An eventual work-study programme for 12 to 13 year-olds also remains a possibility, should the Bangladesh Labour Code be amended to allow for it. The possibility of food supplementation will also be explored.

(f) The MOU includes provisions for creating a credible verification programme to be developed by ILO and overseen by an informal steering committee to ensure observance of its terms. The Government of Bangladesh commends the signatories for formulating a workable and compassionate plan to tackle a complex problem. The Government is hopeful that the successful implementation of the MOU will place the garments industry of Bangladesh at the very forefront of regional and international efforts to end child labour. This is also consistent with the position of the Government, which is reflected in its ratification of the Convention on the Rights of the Child and in the MOU signed by the Government with ILO under the International Programme on the Elimination of Child Labour (IPEC).

(g) Despite being among the least developed countries, Bangladesh has made commendable efforts at the risk of great financial and social costs, which should be appreciated not only by the importing countries but by all nations of the world. It is hoped that because of this pioneering move to eliminate child labour, the Governments of the importing countries and concerned NGOs will make appropriate moves to open up greater access for Bangladesh garments and encourage people with the slogan "Buy Bangladesh".

(h) Implementation of the MOU and sustaining such programmes will require funds apart from those pledged by BGMEA, UNICEF and ILO. The international agencies and private donors should, therefore, come forward to contribute to the schooling and subsistence programmes, as underlined in the MOU.

(i) The Government of Bangladesh considers the MOU as a model for the eradication of child labour in a socially responsible way which may be worth emulating.

Philippines

[Original : English]
[29 May 1996]

7. In the Philippines, the Government's commitment to and vision for Filipino children are clearly set out in the Philippine Plan of Action for Children (PPAC), formulated in 1990 after the Government ratified the Convention on the Rights of the Child. The Philippines is also a signatory to a number of other international covenants concerned with the promotion of the rights and welfare of working children, the most prominent of which is the ILO Convention No. 138 concerning the Minimum Age for Admission to Employment.

8. Other policy instruments in force to support fully and firmly the continued protection of Filipino children from abuses and exploitation include:

(a) The Child and Youth Welfare Code, enacted in 1974, serves as the Government's framework for the promotion of the welfare of Filipino children. It defines the rights of children, the rights and responsibilities of parents and the role of other institutions (community, religious institutions, school) in promoting the welfare of children. It also recognizes the special categories of children who need immediate rehabilitative and developmental services.

(b) The Labour Code of the Philippines contains provisions that prohibit the employment of children below 15 years and regulates the employment of minors or young workers. For hazardous occupations, the minimum age of employment is set at 18 years. Those between 15 and 18 years of age are eligible only for employment in non-hazardous work. Department Order No.4 issued by The Department of Labour and Employment enumerates more than 590 occupations in 9 occupational groupings in which employment of children is banned.

(c) Republic Act No. 7610, enacted in 1992, declares as a State policy the special protection of children from all forms of abuse, neglect, cruelty, exploitation, discrimination and other conditions prejudicial to their development. It imposes stringent penalties for specific acts of exploitation and discrimination (for example, prostitution and sexual abuse, child trafficking and other abuses) and requires the formulation of a comprehensive government programme on child abuse, exploitation and discrimination. RA 7610 also outlines the rights and privileges of children in varying situations and circumstances, as well as remedial procedures for the prosecution of acts punishable under the law.

(d) Republic Act No. 7610 was amended by Republic Act No. 7658 in 1993. The 1993 law reiterated some of the provisions of RA 7610 regarding procedural requirements for the employment of children, but added safeguards to prevent child labour. Under the new law, employment of children is subject to very stringent rules. It states that work should not impair the child's normal development and obligates the parents or legal guardians to provide the prescribed primary and secondary education.

9. Initiatives are currently also being undertaken to revise the country's existing rules and regulations governing private recruitment and placement agencies relating to child labour. Part of the proposed new rules is the submission, as an additional requirement in applying for a licence to recruit, of a notarized statement that the applicant agency shall engage in recruitment activities in strict compliance with RA 7610 as amended by RA 7658. This means that the licence of private recruitment and placement agencies will be revoked if they engage in illegal recruitment of children. In addition they will face criminal and administrative liabilities.

10. Despite the lack of reliable information on child labour, the Government has acknowledged the existence of the problem and the need to act on it by putting policy into practice. Major interventions date back to the 1980s. Inter-agency committees were formed to address child labour problems, particularly in hazardous occupations such as muro-ami fishing and child prostitution.

11. In the mid-1980s, the Dutch-funded "Smoky Mountain Project" (a pilot project affecting young scavengers in Metro Manila) implemented by the Department of Labour and Employment successfully weaned children from scavenging activities in Manila's major garbage dump site, Smoky Mountain. The project developed a community-based scheme under which target children were placed in appropriate vocational and livelihood programmes. The present administration has completely rehabilitated the Smoky Mountain area from a dump site for garbage into a community housing and livelihood project.

12. Under the Programme of Cooperation for Children between the Philippines and UNICEF called "Breaking ground for community action on child labour", the subprogramme on children in especially difficult circumstances is considered a breakthrough.

13. The third Philippine-UNICEF programme of cooperation for the period 1988-1993 made inroads towards solving the problem of child labour through a more systematic approach. It engaged in creating appropriate

structures and mechanisms at various levels of governance to coordinate, advocate and manage services and activities for working children and their families. An initial core group of two government agencies and the academe expanded to include other government agencies, a network of NGOs, and representative organizations from the employer and labour sectors. The five-year project was characterized by efforts to elevate child labour to the highest level of government policy and agenda for action. Efforts were geared towards raising awareness and advocacy. The early part of the programme consisted of capability building, direct service delivery and research. The fourth country programme for children covers the years 1995-1998.

14. In 1994, the Government, through the Department of Labour and Employment, entered into an agreement with the International Labour Organization's International Programme on the Elimination of Child Labour (ILO-IPEC). The commitment of support by ILO-IPEC further strengthened the initiatives under the UNICEF programme of cooperation. ILO, UNICEF and the Government signed a memorandum of agreement for the "intensified, sustained and unified implementation of a national programme against child labour in the Philippines". This in effect integrated efforts under the UNICEF programme and ILO-IPEC into one national programme on child labour whose objectives are:

(a) To promote the enforcement of relevant provisions of the Convention on the Rights of the Child, other international labour standards, and all national policies, laws and standards in order to prevent or protect:

(i) Children below 18 years old from working in hazardous occupations;

(ii) Children from 15 to 18 years old in employment which violates standards on terms and conditions of work for children, for example, hours of work, occupational safety and health, payment of a minimum wage, provision of social security, etc.;

(iii) Children below 15 years of age who are employed, without an appropriate work permit, by persons other than their parents or legal guardians, in enterprises employing workers other than members of the employer's family, and/or in work that impairs their normal development, including their schooling.

(b) To strengthen the ban on employment of children in conditions that are hazardous to their health and well-being, especially in the 29 provinces and 15 cities covered by the Government-UNICEF cooperation agreement as well as in other areas that may be covered by ILO-IPEC, through the pursuit of the following support objectives:

(i) Increased participation of working children between 15 and 17 years old and former child labour victims in advocacy work for the Convention on the Rights of the Child;

(ii) increased participation of working children in formal and non-formal educational activities of Education for All (EFA) and as a strategy for removing children from hazardous work;

(c) To identify and provide rehabilitation services for work-related health and/or psycho-social problems of child labourers and to improve their access to health services as affirmative support to their right to normal development;

(d) To enhance access to viable employment or income-augmenting opportunities for child labourers, parents and/or siblings of employable age, for the direct purpose of eliminating the economic justification of illegal employment.

The Child Labour Program pursues eight programme strategies, namely:

(a) Social research and investigation;

(b) Advocacy and social mobilization;

(c) Community organizing;

(d) Provision of basic, special alternative services;

(e) Employment promotion and income generation;

(f) Policy development and legal protection;

(g) Institutionalization/capability building;

(h) Project documentation, monitoring and evaluation.

15. To improve the quality of data collection on child labour, a household based survey of child labour has been pilot tested and integrated into the regular survey conducted by the National Statistics Office. The aim of this survey is to yield more accurate socio-demographic data on child labour up to the regional level. Meanwhile, participating local government units are also conducting situation analysis of communities and masterlisting of child labourers. Together, these research activities will contribute to a more reliable database for better focusing of programme interventions.

16. The Philippine Information Agency and other programme partners in the media have developed video and radio presentations which deal with the issue of child labour. A communication plan that will be implemented at the national, regional and community levels is also being drawn up. Apart from these, awareness-raising activities are being conducted among potential partners and various audiences in forums organized by programme implementors from different government and non-governmental organizations.

17. The Departments of Social Welfare and Development, Health, Education, Culture and Sports, and Labour and Employment provide various and appropriate preventive and rehabilitative services to child labourers and their families. Such services include the provision of counselling services for the children, effectiveness seminars for their parents, and livelihood and employment opportunities for their families.

18. Various training and seminars on special skills for programme implementors at various levels are conducted, based on needs. Thus, social workers, labour inspectors, trade unionists and others have benefited from such training.

19. Under the project "Breaking ground for community action on child labour", a flagship undertaking called the Sagip Batang Mangoagawa (Save the Child Worker) Inter-Agency Quick Action Program is being institutionalized to provide rescue and rehabilitative services to children in hazardous and exploitative situations. Erring employers will be criminally prosecuted under RA 7610, as amended by RA 7658.

20. The activities under the Sagip Batang Mangoagawa programme include active monitoring and reporting of cases to the proper authorities, which can refer cases to the appropriate institutions or provide assistance directly. They also include rescuing the child labourers from factories or other places of employment, and when necessary, imposing sanctions on the illegal employer/recruiter. The programme also provides psycho-social and health services to child labour victims; renders assistance in the prosecution of administrative, civil and/or criminal cases against violators of child labour laws; and follows through with delivery of further services to the children's family and community.

21. Since July 1993, at least 48 successful rescue operations have been conducted, with a total of 129 child labourers rescued from illegal employment. Some of those rescued were sent home while others were placed in the custody of the Department of Social Welfare and Development. The criminal aspects of the cases against illegal employers are currently being prosecuted by the Department of Justice. The charges of violations of labour standards have been settled by the Department of Labour and Employment.

22. In line with the Government's intensified campaign against abuse of child labour, the Department of Labour and Employment has conducted special training for its labour inspectors for more effective enforcement of labour laws. The inspectors, who number only about 250 nationwide, are being augmented by new trainees and students in line with the Department's commitment to inspect all establishments employing 10 or more workers and at least 40 per cent of those employing 5 to 9 workers.

23. An orientation workshop on laws prohibiting child labour was conducted for members of the Philippine Organization of Private Employment Agencies in June 1994 to discourage their participation in the illegal employment of children. More such workshops/seminars have been scheduled to intensify the drive against the recruitment of child labourers.

24. Among other ongoing and pipeline projects for 1995-1996 are:

(a) A nationwide child labour survey which will be integrated into the labour force survey of the National Statistics Office;

(b) Advocacy activities to strengthen the enforcement of national legislation and prosecution;

(c) Intensified training of labour inspectors in methods for improved inspection of child labour;

(d) Initiatives against child trafficking for domestic labour, focusing on both prevention and rehabilitation of victims;

(e) Interventions to remove children from small-scale mining operations;

(f) Support activities for educators involved in the monitoring of school performance of children in home-based industries;

(g) Community mobilization for the protection and rehabilitation of the victims of child prostitution;

(h) Training for service providers concerned with child labour;

(i) Awareness-raising activities involving the tri-media approach;

(j) Preparatory work on IPEC secondary target groups.

25. Besides government bodies, a number of non-governmental organizations are also engaged in programmes whose target beneficiaries are working children. Their activities are directly or indirectly related to child labour, for example, developmental or welfare projects, direct-service delivery, or support services for advocates and implementors.

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CONTEMPORARY FORMS OF SLAVERY

Preliminary report of the Special Rapporteur on the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict, Ms. Linda Chavez

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Introduction

1. At its forty-seventh session, the Sub-Commission, in its resolution 1995/14, welcomed the working paper prepared by Ms. Linda Chavez on the situation of systematic rape, sexual slavery and slavery-like practices during wartime, including internal armed conflict (E/CN.4/Sub.2/1995/38) and decided, since the subject requires careful and comprehensive inquiry, to appoint Ms. Linda Chavez as Special Rapporteur with the task of undertaking an in-depth study of the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict. In the same resolution, the Sub-Commission requested the Special Rapporteur to submit a preliminary report to the Sub-Commission at its forty-eighth session and a final report at its forty-ninth session.

2. The Commission on Human Rights, at its fifty-second session, by its decision 1996/107, endorsed the decision of the Sub-Commission and decided to invite Governments, competent bodies of the United Nations, the specialized agencies, regional intergovernmental organizations and non-governmental organizations to provide or continue to provide information on this question. The Economic and Social Council, in July 1996, endorsed the decision of the Commission in its decision 1996/....

3. The first section of the present report outlines the purpose and scope of the study. Section II provides an historical overview of the use of systematic rape as an instrument of policy. The third section details the relevant existing norms in international human rights and humanitarian law. Issues of responsibility and liability are explored in section IV. The fifth section reviews forums with potential jurisdiction to try perpetrators of mass rape and sexual slavery during times of armed conflict. Section VI describes possible sanctions against violators of the international law relevant to this subject. The seventh section identifies various possible forms of reparations, including compensation, rehabilitation and restitution. In the eighth section, methods of deterrence and prevention are discussed. The ninth section looks at problems related to this matter. Section X contains final remarks, conclusions and recommendations, including issues to be discussed in the final report of the Special Rapporteur.

I. PURPOSE AND SCOPE OF THE STUDY

4. Pursuant to her mandate, the Special Rapporteur has been requested to examine the situation of systematic rape, sexual slavery and slavery-like practices during wartime, including internal armed conflict.

5. Rape (non-consensual intercourse through the use of physical force, threats or intimidation) is an unfortunate and widespread phenomenon which has particularly devastating consequences on the enjoyment of the basic right to dignity and security of person of women, who comprise the greatest number of victims of rape. Systematic rape can be and is used as an instrument of torture or as an abhorrent instrument of warfare. 1/ In these instances, rape violates fundamental principles and rules of international law, in particular humanitarian and human rights law. Rape committed by soldiers has

been prohibited by law for centuries. None the less, in many situations, soldiers have been given license to rape as an instrument of policy. Forced prostitution during wartime has also been practised on a large scale.

6. In the present report, the Special Rapporteur outlines the following issues that will be the subject of an in-depth study in her final report:

(a) The history of systematic rape as an instrument of policy, with special emphasis on the broad-scale use of rape, sexual slavery and slavery-like practices during wars, including armed conflicts, in this century;

(b) Rape as a violation of international human rights law, and a crime under international humanitarian law, including the evolving definition of rape as a war crime;

(c) Reparation for victims of systematic rape, sexual slavery and slavery-like practices during situations of armed conflict.

II. THE HISTORY OF SYSTEMATIC RAPE AS AN INSTRUMENT OF POLICY

7. During the German invasion of Belgium in the First World War, German soldiers systematically raped Belgian women in order to terrorize the entire population. 2/ German soldiers used rape during the Second World War as a weapon of terror and as a means of obtaining "the total humiliation and destruction of 'inferior peoples' and the establishment of their own master race". 3/

8. The Special Rapporteur of the Commission on Human Rights on violence against women, Ms. Radhika Coomaraswamy, has reported that between 1932 and the end of the Second World War approximately 200,000 women were forcibly conscripted into prostitution by the Japanese Imperial Army. The Japanese military was reportedly responsible for the establishment, operation and management of "comfort stations", as well as the manner in which the women were abducted. The majority of these "comfort women" were from Korea, but many were also drawn from China, Indonesia, the Philippines, and other Asian countries under Japanese control. Most were young girls between the ages of 11 and 20. Various methods, including physical violence, kidnapping and deception, were reportedly used to carry out the official policy of providing sexual services to Japanese soldiers. Former victims have testified that they had to endure multiple rape on an everyday basis, suffered severe physical abuse and were exposed to sexually transmitted diseases. 4/

9. The Special Rapporteur of the Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia has reported that between 1992 and 1994 in the former Yugoslavia, rape of women and girls occurred on a large scale, with possibly as many as 20,000 victims. It appears that no attempts were made by either military or political authorities to stop the practice. There is clear evidence that Croat, Muslim and Serb women were detained, some in special camps organized solely for the purpose of

sexual abuse, for extended periods of time and repeatedly raped. Mass rape, sexual abuse and forced pregnancies of women in Bosnia and Herzegovina are considered to have been important elements of the Serb policy of "ethnic cleansing". 5/

10. The Special Rapporteur on violence against women has also reported that the armed conflict in Rwanda produced widespread rape and abduction of women and girls. According to first-hand testimonies and human rights reports, soldiers and militiamen raided homes, hospitals and camps for the displaced in search of women to rape. "Girls as young as five have been raped. Some women and girls were macheted and then raped immediately afterwards, while others were allegedly gang raped, sometimes in public places." 6/

11. In addition, human rights groups and non-governmental organizations have extensively documented sexual abuse of women during armed conflicts. The following examples serve only as illustrations. Further study needs to be done to verify and document this problem.

(a) A non-governmental organization has reported that during Bangladesh's nine-month war of secession from Pakistan at least 200,000 and possibly more civilian women and girls were raped by Pakistani soldiers. 7/

(b) Another non-governmental organization has stated that rape of women by security forces is common in Peru as part of the armed conflict between the Shining Path and government counter-insurgency forces. 8/

(c) The Special Rapporteur on violence against women has stated that, in Haiti, the use of rape against women appeared to have been an integral part of political violence and terror. Armed civilian auxiliaries, "attachés", members of the Front for the Advancement and Progress of Haiti, and the Haitian armed forces had all been implicated. 9/

(d) The Special Rapporteur of the Commission on Human Rights on the situation of human rights in Kuwait under Iraqi occupation has indicated that systematic rape was also practised during the Iraqi occupation of Kuwait. 10/

12. When rape is used as a weapon of war, it is an aggressive and violent act which provides satisfaction because of the humiliation and helplessness of the victim; it is used as an instrument to punish, intimidate, coerce, humiliate and degrade. 11/ It is a symbolic act performed to humiliate a community, ethnic group or nation. The systematic and deliberate use of rape is a method of terrorizing a civilian population and forcing them to flee. Forced pregnancy and maternity are strategies to dilute and humiliate an ethnic group. Systematic rape has also been widely used as a propaganda weapon. 12/

13. Distinctive patterns of rape are discernible in situations of armed conflict. Prior to military action, women are abused and raped by looters and civilians in their own homes, or in public in order to deter resistance to the forthcoming military action. When the military arrives, women are raped and/or killed and deported to detention camps. In the detention camps, they are raped, and may be required to serve as sexual slaves to the enemy

soldiers, who beat, torture and threaten them. Women may also be detained in hotels, factories, schools or churches for the sole purpose of serving the sexual desires of soldiers and other enemy parties. 13/

III. RELEVANT EXISTING INTERNATIONAL NORMS

A. International humanitarian law norms

14. Rape and sexual abuse of women and girls in situations of armed conflict (whether international or internal) constitute a grave breach of international humanitarian law. The Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) relates to the protection of persons "who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals" (art. 4). Article 27 states that "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault". Rape and enforced prostitution are expressly prohibited. Women are entitled in all circumstances to respect for their persons, honour, and family rights; they should be treated humanely at all times and protected against acts of violence.

15. Article 147 of the Fourth Geneva Convention defines acts which constitute "grave breaches" of the Convention. There is no immunity of liability under international law for these grave breaches. If committed against persons protected by this Convention, "grave breaches ... shall be those involving any of the following acts ... wilful killing, torture or inhuman treatment, ... wilfully causing great suffering or serious injury to body or health ..." (art. 147). Rape and sexual abuse constitutes torture and inhuman treatment which causes suffering and serious bodily injury.

16. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) was adopted on 8 June 1977. Article 85 of Protocol I provides that the acts described as "grave breaches" in the Conventions are also grave breaches of Protocol I if committed against protected persons in the power of an adverse party.

17. Respect for the individual is a fundamental principle set forth in article 11.1 of Protocol I. Article 11.1 states: "The physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty ... shall not be endangered by any unjustified act or omission". The fundamental guarantees set forth in article 75 of Protocol I include humane treatment in all circumstances, and respect for the person and the honour of persons who are in the power of a Party to the conflict. Threats and outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault are prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents (art. 75.2). Further, women are explicitly protected by article 76.1 which states: "Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault."

18. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties (i.e. internal), each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

> "(I) Persons taking no active part in the hostilities ... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place ...:
>
> (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
>
> ...
>
> (c) outrages upon personal dignity, in particular humiliating and degrading treatment." 14/

19. The Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) applies without adverse distinction to all persons affected by an armed conflict (art. 2). Article 4.2 states that the following acts shall remain prohibited at any time or in any place whatsoever:

(a) Violence to life, health and physical or mental well-being of persons ...;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) Slavery and the slave trade in all their forms;

(h) Threats to commit any of the foregoing acts.

B. War crimes and crimes against humanity

20. Genocide is defined in article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide as:

> "Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group."

Mass systematic rape is considered to be an insidious form of genocide. 15/

21. Article 6 of the Charter and Judgment of the International Military Tribunal at Nürnberg states:

"The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) Crimes against peace ... .

(b) War crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory ...

(c) Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war ... whether or not in violation of the domestic law of the country where perpetrated ..."

22. In its resolution 95 (I) of 11 December 1946 the General Assembly affirmed "the principles of international law recognized by the Charter of the Nürnberg Tribunal and the judgment of the Tribunal".

23. Allied Control Council Law No. 10 was issued to implement the London Agreement 16/ and to define triable offences for the cases not pursued by the International Military Tribunal at Nürnberg. It explicitly recognizes the criminal nature of sexual abuse and slavery of women during times of armed conflict. Article II states:

"1. Each of the following acts is recognized as a crime:

(a) Crimes against Peace ...

(b) War Crimes ...

(c) Crimes against Humanity. Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated."

24. In addition, article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity states:

"No statutory limitation shall apply to the following crimes, irrespective of the date of their commission:

(a) War crimes as they are defined in the Charter of the International Military Tribunal ... and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946, particularly the 'grave breaches' enumerated in the Geneva Conventions ...

(b) Crimes against humanity whether committed in time of war or time of peace ... even if such acts do not constitute a violation of the domestic law of the country in which they were committed."

25. There is growing recognition that acts of rape committed in wartime constitute war crimes and crimes against humanity. 17/ Rape is an attack on the physical and mental integrity of the individual, and an outrage against personal dignity. It is a form of gender-based violence and of cruel, degrading, inhuman and humiliating treatment forbidden by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. The use of widespread, systematic rape as a tool of war is clearly a crime against humanity. The United Nations Commission of Experts charged with investigating war crimes in the former Yugoslavia concluded that the practice of "ethnic cleansing" including rape as one component is a crime against humanity; each component may by itself constitute a war crime.

C. International human rights norms (global and regional human rights instruments)

1. Civil and political rights

26. Several articles in the Universal Declaration of Human Rights implicitly prohibit mass rape during times of armed conflict. Article 3 establishes the right to life, liberty, and security of person. Pursuant to article 4, "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms". Article 5 prohibits torture and cruel, inhuman or degrading treatment or punishment. A woman's right to her privacy and honour is protected by article 12.

27. The International Covenant on Civil and Political Rights expounds upon these fundamental human rights. Article 7 prohibits torture and cruel, inhuman or degrading treatment or punishment; article 8 prohibits all forms of slavery. These obligations are strictly non-derogable (art. 4.2).

28. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in June 1993, categorically states:

"Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response." (Part II, para. 38)

2. Slavery, servitude, forced labour and similar practices

29. Article 1 (2) of the Slavery Convention states, "The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery ...". International Labour Organization (ILO) Convention (No. 29) concerning Forced Labour defines "forced or compulsory labour" as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (art. 2).

30. Pursuant to article 1 (e) of ILO Convention (No. 105) concerning the Abolition of Forced Labour, each member of ILO ratifying this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour as a means of racial, social, national, or religious discrimination. Further, article 1 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others states:

> "The Parties ... agree to punish any person who, to gratify the passions of another:
>
> (1) Procures, entices or leads away, for purposes of prostitution, another person ...
>
> (2) Exploits the prostitution of another person ..."

3. Human rights of women

31. Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women requires States to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. The Committee on the Elimination of Discrimination against Women has interpreted the definition of discrimination in article 1 to include gender-based violence also. General Recommendation No. 19, issued by that Committee at its eleventh session in 1992, states that "the right to equal protection according to humanitarian norms in time of international or internal armed conflict" is one of the fundamental rights to which women are entitled. 18/

32. In addition, paragraph 4 of the Declaration on the Protection of Women and Children in Emergency and Armed Conflict states:

> "All efforts shall be made by States involved in armed conflicts ... to spare women and children from the ravages of war. All the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, ... degrading treatment and violence, particularly against that part of the civilian population that consists of women and children."

33. Paragraph 5 of the Declaration further states that all forms of repression and cruel and inhuman treatment of women and children committed by belligerents in the course of military operations or in occupied territories shall be considered criminal.

34. The Declaration on the Elimination of Violence against Women, adopted by the General Assembly in December 1993, defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty" (art. 1).

35. In September 1995, the Fourth World Conference on Women adopted the Beijing Declaration and Platform for Action, in which it urged Governments and international and regional organizations to:

> "Respect fully the norms of international humanitarian law in armed conflicts and take all measures required for the protection of women and children, in particular against rape, forced prostitution and any other form of indecent assault;" (para. 144 (b))
>
> "Urge the identification and condemnation of the systematic practice of rape and other forms of inhuman and degrading treatment of women as a deliberate instrument of war and ethnic cleansing and take steps to ensure that full assistance is provided to the victims of such abuse for their physical and mental rehabilitation;" (para. 145 (c))
>
> "Uphold and reinforce standards set out in international humanitarian law and international human rights instruments to prevent all acts of violence against women in situations of armed and other conflicts; undertake a full investigation of all acts of violence against women committed during war, including rape, in particular systematic rape, forced prostitution and other forms of indecent assault and sexual slavery; prosecute all criminals responsible for war crimes against women and provide full redress to women victims." (para. 145 (e))

4. Rights of the child

36. Young girls frequently are victims of sexual violence in situations of armed conflict. Principle 9 of the Declaration on the Rights of the Child states that the child shall be protected against all forms of neglect, cruelty and exploitation. Pursuant to article 34 of the Convention on the Rights of the Child, States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. States parties shall in particular take all appropriate measures to prevent the exploitative use of children in prostitution or other unlawful sexual practices, and ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37). In addition, pursuant to article 38.1, States parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

5. Human rights in the administration of justice

37. Torture is defined in article 1 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Three elements are necessary for an act to constitute torture. First, there must be a physical or mental act which causes severe pain or suffering. Second, the perpetrator must inflict the pain and suffering for a specified purpose or

intent. Third, the perpetrator must be a public official or a person acting in an official capacity, such as a soldier or a commanding officer. The Special Rapporteur of the Commission on Human Rights on the question of torture views rape in detention as torture. Amnesty International takes the same view. 19/ The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, including rape and sexual slavery.

38. A state of war may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment (Convention against Torture, art. 2.2). 20/ Further, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly in 1988 requires that, "all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person" (Princ. 1).

6. Prevention of discrimination

39. Racial discrimination is defined in the International Convention on the Elimination of All Forms of Racial Discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise ... of human rights and fundamental freedoms" (art. 1.1). States parties to that Convention undertake to prohibit and to eliminate discrimination in the enjoyment of a number of rights, including the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution (art. 5 (b)).

40. Inflicting serious bodily or mental harm upon members of a racial group, or subjecting them to torture or to cruel, inhuman or degrading treatment or punishment is a "crime of apartheid" under the International Convention on the Suppression and Punishment of the Crime of Apartheid (art. II (a) (ii)).

7. Rights of refugees

41. A refugee may not be expelled or returned (refoulé) to a place where his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion. 21/ The Executive Committee of UNHCR condemned persecution through sexual violence as a gross violation of human rights, a grave breach of humanitarian law, and a particularly serious offence to human dignity. The Executive Committee also urged States to respect and ensure the fundamental right to personal security, and to recognize as refugees persons whose claim to refugee status is based upon a well-founded fear of persecution, through sexual violence, for reasons of race, religion, nationality, membership of a particular social group, or political opinion. 22/

8. Regional human rights mechanisms

(a) European Convention for the Protection of Human Rights and Fundamental Freedoms

42. Under the European Convention for the Protection of Human Rights and Fundamental Freedoms, no one shall be subjected to torture or to inhuman or degrading treatment or punishment (art. 3). Neither shall anyone be held in slavery or servitude (art. 4). The above-mentioned rights are non-derogable pursuant to article 15. Further, no one shall be required to perform forced or compulsory labour.

(b) Inter-American Convention on Human Rights

43. The right to humane treatment is enshrined in article 5 of the American Convention on Human Rights. In accordance with article 6, "No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women". Article 6 also requires that no one be required to perform forced or compulsory labour. In addition, on 9 June 1994 at Belém do Pará, countries of the Latin American region adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. Article 1 defines violence against women as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere".

(c) African Charter on Human and Peoples' Rights

44. Pursuant to article 5 of the African (Banjul) Charter on Human and Peoples' Rights, every individual has the right to the respect of the dignity inherent in a human being. "All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." States parties have the obligation to ensure the elimination of every discrimination against women and the protection of the rights of the woman and the child as stipulated in international declarations and conventions (art. 18).

IV. RESPONSIBILITY

A. State responsibility

45. In international law, State responsibility arises when a State acts in an internationally wrongful manner. The International Law Commission has stated that international crimes include serious breaches "on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid". 23/ A State that breaches its humanitarian or human rights obligations under international law and injures a national of another State may be responsible to that State for reparation. 24/ State responsibility under multilateral human rights treaties or customary human rights law may also be due to the community of nations. 25/ Further, State responsibility for breaches of

international human rights law creates the right to effective remedy for individual persons and groups of persons who are under the jurisdiction of the offending State and who are victims of those breaches.

46. Several instruments specifically set forth State responsibility for violations of humanitarian law. The Fourth Geneva Convention names the party to the conflict in whose hands protected persons are as responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred (art. 29). Article 32 states:

> "The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents."

47. Pursuant to Protocol I to the Geneva Conventions, a party to the conflict which violates the Geneva Conventions or Protocol I shall be responsible for all acts committed by persons forming part of its armed forces (art. 91).

48. Article 5 (3) of the Slavery Convention declares that, in all cases, the responsibility for any recourse to compulsory or forced labour shall rest with the competent central authorities of the territory concerned.

B. Individual responsibility

49. Individuals may also be held accountable for acts which breach international law. Several instruments of humanitarian and human rights law provide for individual responsibility for violations such as systematic rape. Protocol I to the Geneva Conventions requires High Contracting Parties and Parties to a conflict to repress grave breaches, and to take measures to suppress all other breaches of the Conventions or of this Protocol which result from a failure to act when under a duty to do so (art. 86.1). The fact that a violation was committed by a subordinate does not absolve superiors from penal or disciplinary responsibility if they knew or had information that should have enabled them to conclude that the subordinate was committing or was going to commit such a breach, and if they did not take all feasible measures within their power to prevent the breach (art. 86.2). In fact, pursuant to article 87, commanders are responsible for the prevention and suppression of breaches of the Conventions and Protocol.

50. In accordance with the Convention on the Prevention and Punishment of the Crime of Genocide, persons committing genocide are to be punished, whether they are constitutionally responsible rulers, public officials or private individuals (art. IV). Article II, paragraph 4 (a) of Allied Control Council Law No. 10 stated: "The official position of any person, whether as Head of State or as a responsible official in a Government Department, does not free him from responsibility for a crime or entitle him to mitigation of

punishment". While the fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime, it may be considered a mitigating factor (art. II, para. 4 (b)).

51. If war crimes or crimes against humanity are committed, the provisions of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity apply to representatives of the State authority and private individuals who, as principals or accomplices, participate in or directly incite others to the commission of any of those crimes, or who conspire to commit them, irrespective of the degree of completion, and to representatives of the State authority who tolerate their commission (art. II).

52. Under the International Convention on the Suppression and Punishment of the Crime of Apartheid, international criminal responsibility attaches, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State (whether residing in the State in which the acts are perpetrated or in some other State) that commit, participate in, incite, conspire in, abet or encourage the commission of the crime of apartheid (art. III).

53. In addition, in its general recommendation No. 19 on violence against women the Committee on the Elimination of Discrimination against Women recognized that:

> "Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."

V. FORUMS WITH POTENTIAL JURISDICTION

A. International Court of Justice

54. The jurisdiction of the International Court of Justice is comprised of all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties or conventions in force. 26/ Pursuant to article 36.2 of its Statute, the International Court of Justice may decide legal disputes concerning:

(a) Any interpretation of a treaty;

(b) Any question of international law;

(c) The existence of any fact which, if established, would constitute a breach of an international obligation;

(d) The nature or extent of the reparation to be made for the breach of an international obligation.

55. On 20 March 1993, the Republic of Bosnia and Herzegovina submitted an application instituting proceedings before the International Court of Justice against the Republic of Yugoslavia (Serbia and Montenegro) for violating the

Convention on the Prevention and Punishment of the Crime of Genocide. In addition, the application referred to several provisions of the four Geneva Conventions and Protocol I thereto and the Universal Declaration of Human Rights.

56. Several international human rights conventions contain provisions allowing for a dispute to be submitted to the International Court of Justice. For example, article IX of the Convention on the Prevention and Punishment of the Crime of Genocide and article 22 of the Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of Others provide that disputes between the Contracting Parties relating to the interpretation, application or fulfilment of those Conventions shall be submitted to the Court at the request of any of the parties to the dispute.

B. International criminal tribunals or specialized war crimes tribunals

57. Article VI of the Genocide Convention provides that persons charged with genocide may be tried by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction. The International Convention on the Suppression and Punishment of the Crime of Apartheid also provides that an individual charged with a crime of apartheid may be tried by an international penal tribunal having jurisdiction with respect to those States Parties which have accepted its jurisdiction (art. V).

58. Although grave breaches of the Geneva Conventions can be interpreted to include sexual violence against women in wartime, a very preliminary review of prosecutions of war criminals in the International Military Tribunal at Nürnberg and the International Military Tribunal for the Far East (Tokyo Tribunal) does not reflect charges of rape or sexual assault.

59. In 1993, The United Nations Security Council adopted unanimously resolution 808 (1993) establishing an international tribunal for the prosecution of persons for serious violations of humanitarian law committed in the territory of the former Yugoslavia. The Tribunal is empowered to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions. 27/ In May 1993, in a report to the Security Council, the Secretary-General stated that rape, committed as part of a widespread or systematic attack against any civilian population, was a crime against humanity. 28/

60. Most recently, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 issued its first indictment dealing specifically with rape, sexual abuse and sexual slavery of women and girls. It is the first time that sexual assault and rape have been diligently investigated for the purpose of prosecution under torture and as a war crime and a crime against humanity. 29/

61. Also, in the context of the armed conflict in Rwanda, a commission of experts was established pursuant to Security Council resolution 935 (1994) to examine and analyse grave violations of international humanitarian law in Rwanda, including systematic rape.

C. National courts

62. Several conventions contain provisions relevant to trial in national courts. In accordance with article VI of the Genocide Convention, persons charged with genocide may be tried by a competent tribunal of the State in the territory of which the act was committed. Persons charged with an act constituting a crime of apartheid may be tried by a competent tribunal of any State Party to the Convention on the Suppression and Punishment of the Crime of Apartheid which may acquire jurisdiction over the person (art. V). The Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity take the approach that every State has the right to try its own nationals for war crimes against humanity (Princ. 2). Pursuant to Principle 5:

> "Persons against whom there is evidence that they have committed war crimes and crimes against humanity shall be subject to trial and, if found guilty, to punishment, as a general rule in the countries in which they committed those crimes. States shall cooperate in extraditing such persons."

63. In addition, a State may have legislation in place that allows civil suits to be filed in that State's courts against individuals responsible for systematic rape. For example, a class action suit has been filed in federal court in the United States on behalf of thousands of women and men who have been raped and otherwise abused in Bosnia and Herzegovina. 30/ The complaint asserts that rape is a war crime, a crime against humanity, and a form of torture. The plaintiffs are seeking compensation and punitive damages.

D. Military tribunals

64. Most States have a military code governing the conduct of their armed forces. Soldiers and their commanding officers may be tried in a military tribunal for acts of rape and sexual violence against women. For example, rape is punishable by death or imprisonment under article 120 of the United States Uniform Code of Military Justice.

E. Treaty bodies

65. The Optional Protocol to the International Covenant on Civil and Political Rights allows individuals who claim that any of their rights have been violated under the Covenant to submit communications to the Human Rights Committee. Similarly, pursuant to article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, individuals may submit written communications to the Committee against Torture. Under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, individuals or groups of individuals who claim that their rights enumerated under the Convention have been violated may submit written communications to the Committee on the Elimination of Racial Discrimination after they have exhausted all domestic remedies.

F. European Commission and Court of Human Rights

66. A High Contracting Party may refer to the European Commission any alleged breach of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms by another High Contracting Party (art. 24). In Cyprus v. Turkey, the Commission found that Turkey had violated the prohibition against torture and inhuman or degrading treatment contained in the European Convention on Human Rights. Turkey had invaded Cyprus in July of 1974, and Turkish soldiers committed numerous human rights abuses, including mass rape of Cypriot women. The Commission found that Turkey was imputedly responsible for the rapes and its failure to prevent them. The Commission also stated that the rapes constituted "inhuman treatment" under article 3 of the European Convention on Human Rights. 31/

67. Pursuant to article 25 of the European Convention, individual complaints may also be submitted to the Commission by any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention - provided that State has recognized the competence of the Commission. High Contracting Parties and the Commission also have standing to bring a case before the European Court of Human Rights. If the Court finds a violation by a Party, and the Party's internal law allows only partial reparation, the Court can afford "just satisfaction" to the injured party (art. 50). Under the Second Protocol to the European Convention proceedings will henceforth be concentrated in the European Court of Human Rights.

G. Inter-American Commission on and Court of Human Rights

68. Any person, group of persons, or non-governmental organization (American Convention on Human Rights, art. 44), or any State Party accepting the competence of the Commission (art. 45) may submit communications to the Inter-American Commission on Human Rights complaining of violations of the Convention. The Commission and States Parties that recognize as binding the Court's jurisdiction may submit a case to the Inter-American Court of Human Rights (art. 61). If the Court finds that there has been a violation of a right or freedom protected by the American Convention on Human Rights, the Court can rule that the injured party be ensured the enjoyment of the right or freedom that was violated, and remedy the breach with compensation (art. 63).

H. Permanent Court of Arbitration

69. The Permanent Court of Arbitration was established in 1899 at The Hague by the International Convention for the Pacific Settlement of International Disputes. Originally created for arbitration between States, the Permanent Court of Arbitration enlarged its capacity of arbitration in 1962 to conflicts between individuals and States. Victims of violations of human rights, as well as States, may now submit matters to arbitration.

VI. SANCTIONS

70. Article 146 of the Fourth Geneva Convention provides that the High Contracting Parties undertake to enact the legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of that Convention. The Third Geneva Convention contains a similar provision in article 129.

71. The Contracting Parties to the Convention on the Prevention and Punishment of the Crime of Genocide undertake to provide effective penalties for persons guilty of genocide (art. V). Principle 1 of the Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity states, "War crimes and crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment." States shall assist each other in detecting, arresting and bringing to trial persons suspected of having committed crimes and, if they are found guilty, in punishing them (Princ. 4).

72. ILO Convention No. 29 makes the illegal exaction of forced or compulsory labour punishable as a penal offence and obligates any member ratifying the Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced (art. 25). Article 4 of the Convention against Torture requires States Parties to ensure that all acts of torture are offences under its criminal law, punishable by appropriate penalties. 32/

73. The protections of the Convention relating to the Status of Refugees do not apply when there are serious reasons to consider that a person has committed a crime against peace, a war crime, or a crime against humanity. 33/ Further, the UNHCR Executive Committee, in its Note No. 64 (XLI) - 1990 on refugee women and international protection, urges States, relevant United Nations organizations and non-governmental organizations to identify and prosecute persons who have committed crimes against refugee women and protect the victims of such crimes from reprisals. In its Note No. 73 (XLIV) - 1993 on refugee protection and sexual violence, the UNHCR Executive Committee urges States to implement effective, non-discriminatory legal remedies including the facilitation of the filing and investigation of complaints against sexual abuse of refugee women, the prosecution of offenders, and timely and proportional disciplinary action in cases of abuse of power resulting in sexual violence.

VII. REPARATIONS 34/

74. The Special Rapporteur of the Sub-Commission on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Mr. Theo van Boven, noted in his study that forms of reparations included restitution, compensation, and rehabilitation. Compensation should be provided for any economically assessable damage resulting from human rights violations, such as physical or mental harm; pain,

suffering and emotional distress; reasonable medical and other expenses of rehabilitation; and harm to reputation or dignity. Rehabilitation should include legal, medical, psychological and other care and services, as well as measures to restore the dignity and reputation of the victim. 35/

75. The four Geneva Conventions of 12 August 1949 contain articles providing that "No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or another High Contracting Party" in respect of grave breaches of the Conventions. 36/ Protocol I to the Geneva Conventions states in article 91 that a party to the conflicts which violates the provisions of the Conventions or of this Protocol "shall ... be liable to pay compensation".

76. A number of universal and regional human rights instruments contain express provisions relating to the right to an "effective remedy". Such a formulation is contained in article 8 of the Universal Declaration of Human Rights, article 2.3 (a) of the International Covenant on Civil and Political Rights and article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.

77. The right to compensation is found in regional human rights instruments, 37/ as well as universal instruments such as the International Covenant on Civil and Political Rights (art. 9.5). State Parties to the Convention against Torture promise to ensure that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of a victim, his or her dependants are entitled to compensation. 38/

78. The Convention on the Rights of the Child contains a provision to the effect that States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of ... exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts (art. 39).

79. Article 16 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others states that the Parties "agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present Convention".

VIII. DETERRENCE AND PREVENTION

80. Any Contracting Party to the Convention on the Prevention and Punishment of the Crime of Genocide may call upon the competent organs of the United Nations to take such action under the Charter as they consider appropriate for the prevention and suppression of acts constituting genocide (art. VIII). Further, pursuant to the Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war

crimes and crimes against humanity, States shall cooperate with each other on a bilateral and multilateral basis with a view to halting and preventing war crimes and crimes against humanity, and shall take the domestic and international measures necessary for that purpose (Princ. 3).

81. The Contracting Parties to the Slavery Convention and Protocol undertake "to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery" (art. 5). Pursuant to article 10.1 of the Convention against Torture:

> "Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, ... public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment." 39/

82. The UNHCR Executive Committee, in its Note No. 73 (XLIV) - 1993 urges States to develop and implement training programmes aimed at promoting respect by members of military forces of the right of every individual, at all times and under all circumstances, to security of person, including protection from sexual violence.

IX. PROBLEMS

A. Impunity

83. This study will not analyse in depth the issue of impunity because it has been the subject of a study by Mr. Guissé and Mr. Joinet, Special Rapporteurs of the Sub-Commission (see resolution 1993/43 of the Commission of Human Rights). It is important to note, however, that the impunity of perpetrators of violations of international humanitarian and human rights law in this area does more than prevent victims and their families or dependants from receiving just and adequate reparation; official failure to condemn or punish systematic rape allows rape and other forms of sexual abuse and torture to become tools of military strategy. 40/ In many situations where impunity has been sanctioned by the law or where de facto impunity exists, the victims have no recourse in seeking redress and reparation.

B. Retroactive application

84. An argument can be made that States should not be held liable for sexual abuse and slavery that occurred at a time before they were bound by conventional international law. However, customary international law protecting women from sexual slavery during wartime predates that United Nations system. Rape committed by soldiers has been prohibited by law for centuries. 41/ Article 46 of the Hague Convention IV of 1907 requires that "family honour and rights" be respected. Further, article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity states:

"No statutory limitation shall apply to the following crimes, irrespective of the date of their commission:

(a) War crimes as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945, and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946, of the General Assembly of the United Nations, particularly the 'grave breaches' enumerated in the Geneva Conventions ...

(b) Crimes against humanity whether committed in time of war or in time of peace ... even if such acts do not constitute a violation of the domestic law of the country in which they were committed" [Emphasis added].

C. Enforcement

85. In spite of the existence of a wealth of relevant international standards, women have not been protected from rape nor have these standards provided women redress for rape committed by soldiers during wartime. In order to protect the right of women not to be raped during times of armed conflict, strong and impartial enforcement mechanisms must exist.

X. CONCLUSIONS AND RECOMMENDATIONS

86. It is clear from the material gathered in this preliminary report that there exists a very substantial body of international law relating to systematic rape, sexual slavery and slavery-like practices during wartime, including internal armed conflict. None the less, there is a need for further inquiry as to how those international legal standards can be disseminated broadly, used to prevent further violations, applied to past misconduct, and invoked to provide remedies for victims. While there is preliminary information about the widespread occurrence of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict, a more thorough and comprehensive study is required, which will be submitted by the Special Rapporteur in her final report to the Sub-Commission at its forty-ninth session.

87. In her final report, the Special Rapporteur intends to consider the following principles and approaches.

A. General

(1) Should rape be recognized specifically as a form of torture, a war crime and a crime against humanity?

(2) Should the underlying motives for rape and sexual slavery in times of armed conflict be studied more carefully?

(3) The victims of these atrocities should be treated at all times with respect and understanding. All agencies and mechanisms dealing with human rights and humanitarian issues should be mindful of the perspective of victims of systematic rape and sexual abuse, and of the fact that victims suffer

long-term consequences. A further possibility for study is the silence of victims. Reasons for reluctance to report wartime rape may include shame and social stigma, fear of awakening bad memories, fear of reprisals, a lack of trust in the judicial system and the national legislature, and the belief in the absence of remedies.

(4) Special Rapporteur van Boven stated that more systematic attention should be given at both the national and international levels to the implementation of the right to reparation for victims of gross violations of human rights and humanitarian norms. The United Nations could contribute by standard-setting, conducting studies, producing reports, establishing relief and redress procedures, and pursuing practical actions such as those designed by the United Nations Voluntary Fund for Victims of Torture and the Voluntary Trust Fund on Contemporary Forms of Slavery. 42/

B. United Nations and other intergovernmental bodies and organizations

(1) Should international war crimes commissions and tribunals make a special effort to investigate allegations of and to prosecute gender-specific war crimes of violence against women? Would a permanent criminal court with an impartial enforcement mechanism ensure that the strong body of international human rights and humanitarian law provide adequate protection for women?

(2) Should new instruments, where appropriate, include express language prohibiting sexual abuse and slavery of women at all times, and provide for the right to effective remedy and reparation? Should consideration be given to amending existing instruments in this regard?

(3) Should international treaty bodies that monitor the observance of human rights consistently pay attention to violations in the form of systematic rape, as well as to the question of reparation for victims?

(4) Should more attention be paid to aspects of State responsibility that relate to a State's obligation to respect and ensure the human rights of individuals?

C. States

(1) Should States acknowledge their duty to make reparation for their breaches of international humanitarian and human rights law? This duty may include: investigation of violations, taking appropriate action, including prosecution and punishment, against the perpetrators, and affording remedies to victims. Should States also ensure that no person shall have immunity from liability for their actions which violate the law? Should reparation be proportionate to the gravity of the violations and the resulting harm, and include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition? Should the immediate family, dependants, or other persons having a special relationship with the victim be able to claim reparation in addition to the victim? 43/

(2) How may States provide court or administrative procedures for redress against those responsible for systematic rape on the basis of universal or personal jurisdiction over the perpetrator? Such procedures might, at the very least, establish the culpability of war criminals and limit their movement.

(3) Should States support financially and otherwise the international war crimes tribunals? Could States assist by providing evidence, gathering information, and extraditing indicted criminals.

(4) Should measures of prevention and deterrence be strengthened? Should all States train their armed forces and law enforcement personnel in the standards of international human rights and humanitarian law?

D. Non-governmental organizations

(1) Should non-governmental organizations encourage and help individuals in the filing of lawsuits and the pursuit of other civil remedies against perpetrators of mass rape?

(2) What role should non-governmental organizations play in the area of educating potential perpetrators as to what conduct violates international law, and educating both victims and potential victims in regard to their rights?

(3) Can non-governmental organizations assist by gathering evidence against perpetrators and compiling information about situations in which wide-scale sexual abuse has occurred? Non-governmental organizations should be invited to submit to the Special Rapporteur any information they may have on situations of sexual abuse and slavery of women during times of armed conflict.

Notes

1/ Custodial rape, or rape in circumstances in which the Government is responsible under the law of State responsibility, is well recognized as a violation of the prohibition against torture or inhuman treatment in international human rights law.

2/ Susan Brownmiller, Against Our Will: Men, Women and Rape, Hammondsworth, Penguin, 1977, p. 40.

3/ Ibid, p. 49.

4/ Reports submitted by the Special Rapporteur on violence against women (E/CN.4/1995/42, paras. 286-292; E/CN.4/1996/53/Add.1); report of the Working Group on Contemporary Forms of Slavery on its eighteenth session (E/CN.4/Sub.2/1993/30, paras. 80-87), and on its nineteenth session (E/CN.4/Sub.2/1994/33, paras. 89-97); see also, Ustinia Dolgopol and Snehal Paranjabe, Comfort Women: an Unfinished Ordeal, International Commission of Jurists, Switzerland, 1992.

5/ Report on the situation of human rights in the territory of the former Yugoslavia submitted by the Special Rapporteur, Mr. Tadeusz Mazowiecki (E/CN.4/1993/50, para. 61). See also the preliminary report submitted by the Special Rapporteur on violence against women (E/CN.4/1995/42, para. 268); Bosnia-Herzegovina: Rape and Sexual Abuse by Armed Forces, Amnesty International, January 1993.

6/ African Rights, Rwanda: Death, Despair and Defiance, London, 1994. See also the preliminary report of the Special Rapporteur on violence against women (E/CN.4/1995/42, para. 270).

7/ Ruth Seifert, War and Rape: Analytical Approaches, Women's International League for Peace and Freedom, Switzerland, April 1993, p. 12.

8/ Human Rights Watch/Americas, Untold Terror: Violence against Women in Peru's Armed Conflict, New York, Human Rights Watch, 1992.

9/ E/CN.4/1995/42, para. 269.

10/ See Report on the situation of human rights in Kuwait under Iraqi occupation submitted by the Special Rapporteur, Mr. Walter Kälin. (E/CN.4/1992/26).

11/ E/CN.4/1995/42, para. 275.

12/ Ibid., paras. 279-281.

13/ S/1994/674, para. 249. See also E/CN.4/1995/42, para. 278.

14/ Common article 3 of the Geneva Conventions.

15/ See "Situation of human rights in the territory of the former Yugoslavia", Note by the Secretary-General of 17 November 1992 (A/47/666-S/24809), para. 27.

16/ Agreement for the prosecution and punishment of the major war criminals of the European Axis, signed at London on 8 August 1945.

17/ See Erica-Irene Daes, "New types of war crimes and crimes against humanity: violations of international humanitarian and human rights law", International Geneva Yearbook, 1993; and Theodor Meron, "Rape as a crime under international humanitarian law", American Journal of International Law, vol. 87, No. 3; Frank Newman and David Weissbrodt, International Human Rights: Law, Policy, and Process, draft chapter VI (2d. ed. forthcoming 1996).

18/ Arvonne Fraser and Miranda Kazantsis, CEDAW # 11, International Women's Rights Action Watch, 1992, p. 28.

19/ Beth Stephens, "Women and the atrocities of war", Human Rights, summer 1993, p. 14.

20/ A similar provision exists in article 3 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and Principles 3 and 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

21/ Convention relating to the Status of Refugees, article 33. A similar provision in the Convention against Torture (art. 3.1) protects someone from being returned to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

22/ UNHCR Executive Committee Note No. 73 on Refugee Protection and Sexual Violence, (XLIV), 1993, paras. (a) and (d).

23/ Draft articles on State responsibility, part 1, article 19, Yearbook of the International Law Commission 1980, vol. II (Part Two).

24/ Final report on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms submitted by the Special Rapporteur, Mr. Theo van Boven (E/CN.4/Sub.2/1993/8), para. 42.

25/ Ibid., para. 44.

26/ Statute of the International Court of Justice, art. 36.1.

27/ Statute of the International Tribunal, art. 2.

28/ Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993) (S/25704), para. 48.

29/ International Herald Tribune, "Panel opens genocide case against Serb leaders", 29 June 1996.

30/ Jane Doe, et al. v. Karadzic, 93-0878 (S.D.N.Y. 1993), appeal pending. The case was filed under the Torture Victim Protection Act, which allows victims of gross human rights abuses to bring suit for acts committed in other countries if the court has jurisdiction over the defendant. A complaint charging Radovan Karadzic with genocide, war crimes, and crimes against humanity committed by Bosnian-Serb forces under his command was served on him at a hotel in New York.

31/ Cyprus v. Turkey, 4 ECHR 482 (1976); 4 EHRR 482 (1976).

32/ A similar provision exists in article 7 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Declaration also goes farther in that it requires States to conduct an impartial investigation if there is reasonable ground to believe that an act of torture has been committed, even if there has been no formal complaint.

33/ Convention relating to the Status of Refugees, art. 1 (F) (a). Declaration on Territorial Asylum, art. 1.2.

34/ For a more detailed treatment of this issue, see the final report to the Sub-Commission submitted by Mr. Theo van Boven, Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8).

35/ E/CN.4/Sub.2/1993/8, para. 137.

36/ See articles 50 and 51 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; articles 51 and 52 of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; articles 130 and 131 of the Geneva Convention relative to the Treatment of Prisoners of War; and articles 147 and 148 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

37/ Article 10 of the American Convention on Human Rights, article 21.2 of the African Charter on Human and Peoples' Rights, and article 5.5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

38/ Convention against Torture, article 14.1. The language of article 11 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment is similar but narrower, as the act of torture must be proved to have been committed by or at the instigation of a public official.

39/ A similar provision is contained in article 5 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

40/ J. Vickers, Women and War, London, Zed Books, 993, p. 21. See also E/CN.4/1995/42, para. 284.

41/ For example, rape by soldiers was a capital offence under national military codes as far back as the fourteenth century in England.

42/ E/CN.4/Sub.2/1993/8, para. 133.

43/ Ibid, para. 137.